INTERNATIONAL ARBITRATION.

Historical Notes

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I.

HISTORICAL INTRODUCTION.[1]

In ancient times, when war constituted the normal state of peoples and the foreigner was everywhere treated as an enemy, arbitrations were necessarily rare, and we do not find either a general system or harmonious rules governing the subject. There were a few cases of arbitration in the East and in Greece, but the mode of procedure was not suited to the temperament of the people; and, after the peace of Rome was established, with the civilized world under one government, there was no place for it, since arbitration presupposes a conflict between independent states.

In the Middle Ages, owing to the peaceful influence of the Church, arbitrations were more frequent; and yet their influence was far from producing all the results which might have been expected, perhaps because Europe was then divided into a great number of petty states, or because the rude manners of the period were intolerant of the idea of conciliation.

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1 This Historical Introduction, and the passages on Arbitration in the East and in Greece, Arbitration under the Roman Empire, and Arbitration in the Middle Ages and in More Recent Times, are translations from a work of great merit, entitled *Traité Théorique et Tratique de l'Arbitrage International*, by M. A. Mérignhac, Professor of International Law in the Faculty of Law at Toulouse. The publisher of the work is M. L. Larose, 22, rue Soufflot, Paris.

Later history does not present many cases of arbitration, for the ambition of princes does not, any more than did that of the Roman people, adapt itself to pacific remedies in conflicts in which they hope to gain an advantage by force of arms. Absolute monarchy is essentially warlike; it rarely turns aside from the objects which it pursues, although it has not, as Rome did, either forced its yoke on all nations, or fallen under the combined assaults of those whom it has sought to subjugate.

II.

ARBITRATION IN THE EAST AND IN GREECE.

Exact historical ideas on the subject of International Arbitration among the peoples of the East are somewhat deficient, and the saying that one ought to hesitate to risk himself on unsettled ground seems applicable to our present subject. Here are two instances which appear exact enough. Herodotus relates that during the lifetime of Darius, a contest arose between Artabazanes and Xerxes, and that Darius decided in favor of the latter. After the death of Darius, the judgment of the deceased King not being definitive, and the feelings of the people being somewhat divided, they consented to submit the matter to the decision of the uncle of the two pretenders, Artabanus or Artaphernes, who, in the capacity of a judge, decided in favor of Xerxes. Herodotus also relates that after the defeat of the Ionians, Artaphernes, Satrap of Sardis, sent for the deputies of the cities, and made them sign a contract or a treaty, to the effect that in case of conflict they would settle it by law rather than by means of arms.

The Greeks often resorted to arbitration, but they practiced it among themselves and not with foreign nations, for, like other ancient peoples, they regarded foreigners as barbarians, and treated them

as enemies. Besides, their arbitrations did not cover great political questions, for every Greek city preserved its independence with a jealous care. They related to disputes touching religion, commerce, boundaries and the possession of contested territories, especially of the numerous islands scattered among the Grecian seas. The following are some decisions by arbitration bearing on these different points.

In the time of Solon, five Spartans were chosen to decide between the Athenians and the Megarians, on the subject of the possession of the Island of Salamis. About the year 416 B. C., Argive judges acted as arbitrators as to certain islands of which the Cimolians and the Melians disputed the ownership. The Etolians rendered an arbitral sentence on a question of boundary, between the cities of Melite and Pera in Thessaly. Themistocles determined a dispute between the Corinthians and the Corcyraeans about Leucas, deciding that the peninsula should be held in common upon the payment of twenty talents by the Corinthians. During the reign of Antigone, the inhabitants of Lebedos, having been forced to leave their country, settled in Teos; and certain questions which arose between the old and the new people of the latter city were adjusted by the city of Mitylene, appointed as arbitrator by the King Antigone.

We may point out finally the arbitration of the Sicyonians, on the occasion of an unexpected difference between the Athenians and the Oropians, which arose in the following manner. The city of Oropus, which was situated on the confines of Beotia and Attica, and which was the subject of a quarrel between the Beotians and the Athenians, was allotted to the latter by Philip II after the battle of Cheronea. Driven by necessity, says Pausanias, the Athenians pillaged the city to which they owed protection. The Oropians appealed to the Roman Senate, who delegated the Sicyonians as arbitrators, and they condemned the Athenians to pay five hundred talents as a penalty, which was reduced to one hundred, owing to the intercession of an embassy of three philosophers who were sent by Athens to Rome. This sum was not paid and the Oropians consented to receive an Athenian garrison, and to give hostages, reserving the right to recall them if they gave new grounds of complaint. This deceitful bargain, says Barbeyrac, was the occasion of a war which broke out later between the Romans and the Achaeans, a war which entailed the loss of what was left of the liberty of Greece.

The procedure employed in the arbitrations of the Greeks was like that which is ordinarily observed. The agreement designated the arbitrator and the subject of the litigation ; the arbitrator

named the time and the place of the decision, and the parties sent commissioners to defend their cause. The arbitrator, who was bound in the most solemn manner scrupulously to discharge his trust, conducted the business with religious care, heard the interested parties and received their proofs.

The sentence, drawn up in duplicate, was usually deposited in the temples or other public places, and both sides bound themselves by oaths to execute it.

Arbitration was regarded with favor both by the historians and by the statesmen of Greece. Thucydides praised it in his history of the Peloponnesian war, and mentions with approval the words of the King of Sparta, who said, "It is impossible to attack as a transgressor him who offers to lay his grievance before a tribunal of arbitration." The employment of arbitrators, says M. Laurent, was a distinctive trait of the Greek race. Victors crowned with the pacific laurel, and poets also, had among the Greeks that influence which elsewhere accompanied rank and power. It was for this reason that Pontarcus, a noted wrestler, served as an intermediary between the Eleans and the Achaians; that Pyttalus, victor of the Olympian games, filled the same rôle between the Arcadians and the Eleans; that the poet Simonides prevented an imminent war between Hiero, of Syracuse, and Theron, of Agrigentium. Sometimes friendly cities were chosen as arbitrators. The Oracle of Delphi

was in several cases called on to decide disputes, and it readily counselled arbitration. Thus, in a discussion which arose in 550 between the Kings of the Cyrenaeans, it advised them to choose as arbitrator a citizen of Mantinea, and a certain man called Demonax was designated to discharge in that capacity the functions designated by the Oracle.

The Greeks recognized the use of the arbitral clause, of which we will speak hereafter. A treaty of alliance between Argos and Lacedaemonia, contained at the end a clause which provided that, if a contention should arise between the two allied cities, they should select an impartial city as arbitrator. There was an agreement between the cities of Hyerapytna and Priansus, which stipulated that "in regard to the injuries already done on either side, Enipan and Neon, the 'cosmes' or chief magistrates of Crete, should settle the disputes arising from these causes, before a Tribunal selected from each city. In regard to any future injuries they should commit, they should employ lawyers prescribed in the order of the public edict." The "cosmes" should also indicate the city from which both parties should appoint the arbitrators.

III.

ARBITRATION UNDER THE ROMAN EMPIRE.

The Greek states, as we have seen, had recourse to arbitration only among themselves. Rome, on the other hand, never consented to arbitrate her disputes with neighboring countries. Like Greece, in this respect, she regarded the foreigner as an enemy; and from her origin to the culmination of her greatest splendor, she aspired to universal dominion and devoted to that end her foreign policy. If she made treaties of peace, of friendship, or of alliance with other peoples, it was always with the hope of subjection at some future time. The Roman state was afraid that it might see itself impeded in its projects of conquest by a decision conforming to common right. Besides, the kingly people would have considered it an abasement to submit to the judgment of another power. When the Rhodians proposed their mediation to keep Perseus on the throne, the Senate received their proposition with sovereign contempt; and Titus Livius says that, even in his time, the very remembrance of the incident excited indignation. Nations formerly most tenacious of their independence, and who nominally were living in freedom, were the first to prostrate themselves before the grandeur of Rome, hoping to avert by their complete humility their future servitude. The pretension of Rome to be superior to other

nations, which is the very negation of the idea of arbitration, realized itself completely when she became mistress of the world. Peoples lying dormant in the peace of Rome could no longer assume to formulate against her demands to be submitted to arbitrators. Equal rights, which might lead to conflicts, could not exist between a sovereign and his subjects, and they could only present petitions. In truth, the Senate at first, the Emperor finally, as absolute arbitrators of all claims, gave audience to all deputies of peoples who had petitions to present, and who came as suppliants to ask for justice, for example, against the exactions of the governors of provinces. They were also the natural judges of conflicts which might arise between the different peoples subject to Roman authority. And the custom of taking the Senate as arbitrator was even introduced among independent nations, who were fascinated by the splendor of the Roman name. But it does not seem that the Romans played the rôle of arbitrator in very good faith, and their behavior might serve as a precedent for La Fontaine's fable, The Oyster and the Advocates. In one case the Romans were arbitrators of some question of boundary between the Aricians and the people of Ardea, and they decided the point at issue by seizing the disputed territory themselves. There was a similar case about 180 B. C. between Nola and Naples. Cicero justly condemns this course, which he styles miserable trickery.

IV.

ARBITRATION IN THE MIDDLE AGES AND IN MORE RECENT TIMES.

The practice of arbitration seems to have obtained in the barbarian world. Procopius cites the example of the Gepidae proposing arbitration to the Lombards, and declaring it to be unjust to use violence toward those who demanded a judge. Again, Cassiodorus relates that the ambassadors of Theodoric, King of the Ostro-Goths, carried letters from their master to the Kings of the Herulians and Varnes. Their mission was to beg those princes to join them and the envoys of Gondebaud in inviting Clovis, King of the Franks, to cease his wars against the Visigoths and to accept the arbitration of the united kings. This entreaty was not in vain, and Clovis consented to such an arrangement.

That which characterizes the period which followed the establishment of barbarians on the ruins of the Roman Empire, was the great tie which Christianity created between nations bound together by one religious doctrine. The Church at this time assumed a preponderating influence, and the Bishops of Rome now became the real sovereigns of the Catholic world. Owing to the powerful impulse given to their action by Gregory VII, the Popes by degrees accepted the idea that they were placed above sovereigns and were the representa-

tives of God on earth. In virtue of their divine power, the Roman Pontiffs, recognized everywhere as the delegates of God, from whom all sovereignty emanates, constituted themselves judges of all cases and evoked to their tribunal all differences between peoples and kings. Innocent III declared that the Pope was the sovereign mediator on earth. When Philip Augustus opposed his claims, he still more strongly affirmed the contested right, in virtue of the idea that peace is a duty of Christians, and that the head of the Church ought to have the power to impose it upon them.

While these claims belong to the order of ideas which especially prevail in the domain of conscience, it cannot be denied that the Church powerfully contributed to the progress of civilization by embracing the cause of the weak against the strong, and by strengthening ideas of peace and concord, which were so rare in those days of violence and constant wars. The principle of pontifical sovereignty had so entered into the manners of the times that Popes were often chosen also as voluntary arbitrators. It has sometimes been said that their intervention, whether spontaneous or specially invoked, was more frequently employed in matters of private interest and internal policy, than of actual international conflict. This may have been so in many instances, but it cannot be denied that they were also called upon to decide liti-

gations much more important, as certain examples will readily show. Popes Alexander III, Honorious III, John XXII, Gregory XI, were chosen as arbitrators in quarrels which agitated Europe; and Pope Alexander VI, by a decision of arbitration which is still celebrated, traced an imaginary line from pole to pole, dividing between the Spaniards and the Portuguese the possession of all countries discovered in the new world. And even after the schism of England, when the Papacy had lost Teutonic and Gallo-Teutonic Europe, and when Gallo-Romanic Europe was itself formed, the prestige of the Popes was still so great that it forced itself on the Poles and the Muscovites.

But acts of opposition, which began to appear on the part of kings before the XVI century, were accentuated after that time, and the choice of the Pope as arbitrator became less frequent; and the interest of the Papacy in the cause which it had so ardently espoused in the Middle Ages became less effective. When, therefore, the treaty of Vervins of 1598 submitted to the arbitration of the reigning Pope the pretensions of the King of France, Henri III, and of Charles Emanuel, Duke of Savoy, to the Marquisate of Saluces, Clement VIII, worn out by the continued plots of Charles Emanuel, declared that he would resign his mission. But we should not omit to mention, in the seventeenth century, the arbitration of Gregory XV on

the subject of the forts of the "Valteline;" and, also, in the eighteenth century, that of Pope Clement XI, who gave the casting vote as umpire between Louis XIV and Leopold I, who were instituted as arbitrators by Art. 8 of the Treaty of Ryswick.

Religious sentiment, which had raised to so high a pitch the power of the Pope, naturally augmented, though in a less degree, the influence of the bishops, and we find a number of cases in history in which they were chosen as arbitrators. We may refer to the Treaty of Nonancourt, of 1177, which designated three bishops as arbitrators between Louis le Jeune and Henry II of England, on the subject of Auvergne, Châteauroux and other fiefs. In 1276, two bishops and a warrior were nominated as judges between the Kings of Hungary and Bohemia. On the 9th of August, 1475, all the grounds of disagreement between Louis XI and Edward of England were referred to the Archbishop of Paris and the Count of Dunois on the part of France, and to the Archbishop of Canterbury and the Duke of Clarence on the part of England.

The rivals of the Popes in their struggle for universal supremacy were the Emperors of Germany, who considered themselves the successors of the Roman Caesars. The celebrated conflict between the Priesthood and the Empire, the spiritual and

the temporal power, filled the second half of the Middle Ages; and the two principal episodes were the war concerning investitures, and the struggle between the Guelphs and the Ghibellines. The inclination of the Holy Empire to universal domination caused the Emperors to attempt, as the Popes had done, to constitute themselves arbitrators between kings. But in this they did not succeed; and history records only a few instances of arbitration in which they figured as judges. And even when they were accepted as arbitrators, everything was carefully excluded which might have implied their supremacy over other monarchs. Pütter relates that when in 1378 the Emperor Charles IV went to Paris to decide the old controversy between France and England, they apparently recognized his prerogatives, but they carefully avoided everything which could imply a right of supreme jurisdiction, belonging to him over kings.

Beside the religious influence of the Popes, we should place, as having contributed during the Middle Ages to the development of arbitration, feudalism, which, while extending itself over all Europe, naturally predisposed vassals to accept their lords as judges of their respective grievances. The most eminent of these lords, the kings, were often chosen as arbitrators, chiefly the Kings of France. Saint Louis was constituted judge between Henry III of England and his barons, in 1263,

and between the Counts of Luxemburg and of Bar, in 1268. Owing to his great wisdom and to the authority of his character, Louis IX, says M. Lacointa, rivalled the Papacy in the rôle of conciliator and arbitrator. Philip VI, Charles V, Charles VII and Louis XI, were all chosen as arbitrators. The other monarchs of Europe filled the rôle, though not so often, notably the Kings of England, Henry II and William III. But the commission of arbitration was not generally confided to sovereigns from whom were apprehended attempts at absolute domination, after the manner of the German Emperors; and it was for this reason that Philip II proposed himself in vain as arbitrator between France and England.

Occasionally a city assumed the duties of arbitrator, but such occasions were rare. The Treaty of Westminster of October 23, 1655, which re-established friendly relations between France and the Republic of England, stipulated, in article 24, probably because of the preference of Cromwell, that the Republic of Hamburg should act as arbitrator between the two countries, and decide the question of damages on both sides from the year 1640. We may also cite, in 1665, the arbitration of the Grand Council of Malines, between Frederick William, Elector of Brandenburg, and the States-General, concerning the obligation of a debt called the debt of Hofyser; and that of the States-Gen-

eral of the United Provinces, concerning dissensions relating to fortified places and auxiliary points, between France and Spain, after the peace of Nimeguen.

The parliaments of France, renowned for their wisdom and equity, were chosen to settle disputes between foreign sovereigns.

Besides Popes, Kings, Cities and great constituted bodies, we may mention commissions of arbitration instituted by parties in proportions fixed in advance, and invested with full power over particular subjects.

Again, some eminent jurisconsult was employed, specially renowned for his juridical knowledge. The doctors of the Italian Universities of Perugia and Padua, and particularly of the celebrated University of Bologna, were, says Wheaton, on account of their fame and their knowledge of law, often employed as diplomatists or arbitrators, to settle conflicts between the different states of Italy. They were employed to determine the question of the right of the House of Farnese to the succession to the throne of Portugal. One of the most illustrious of them, Alciat, decided upon the rights of sovereignty and of independence of the different principalities of Italy and of Germany. In France, Jean Begat, councillor of the parliament of Dijon, was chosen as arbitrator be-

tween the King of Spain and Switzerland, in relation to Franche Comté, in 1570.

Under the influence of religious and feudal ideas, arbitrations were very frequent in the Middle Ages, which afford the remarkable spectacle of conciliation and peace making their way amid the most warlike populations that have ever existed. They were especially frequent in Italy, where in the thirteenth century there were not less than a hundred between the princes and inhabitants of that country. But, when the Papacy had renounced its rule over civil society, and absolute monarchies gradually became established in Europe on the ruins of feudalism, arbitrations became more rare. They diminished during the course of the fourteenth and fifteenth centuries, and it is stated that from the end of the sixteenth century till the French Revolution, they had almost disappeared from international usage. Nevertheless, says Klüber, to judge by manifestoes and proclamations, no sovereign ever went to war without having made every effort to prevent it. Why, then, he asks, did they not seek arbitration? Klüber, says Kamarowski, did not answer this question; but the answer may be found in these words of Rousseau: "Could they submit themselves to a tribunal of men, who boasted that their power was founded exclusively on the sword, and who bowed down to God only because he is in Heaven"?

If we should try to find judicial rules that governed arbitration in the different periods at which we have glanced, we should discover that they did not present great stability, and that they varied with different litigations. The choice of arbitrators fell generally on monarchs, and exceptionally on arbitral commissions or private individuals. A period was sometimes fixed either for the meeting of the arbitrators (the treaty of Vervins of 1598, Art. 17, provided that it should take place in six months), or for the rendering of the decision (the Treaty of Westminster of 1655 allowed six months and a half). Sometimes a penal clause was inserted, by which a penalty was imposed on the party who refused to submit to the decision; for example, the treaty of the 9th of August, 1475, between Louis XI and Edward IV, prescribed a sum of three million francs.

The procedure, also, varied according to the case, but it usually afforded certain guarantees and was invested with a certain judicial aspect. In the dispute relating to Montferrat, between the Dukes of Savoy and Mantua, and the Marquis of Saluces, Charles V empowered certain persons to examine the matter, and with their advice rendered his judgment. In the presence of these delegates, the lawyers of the litigants appeared and argued, either about the whole of Montferrat, or some of its territories, or special rights. First,

the Emperor decided on the principal object of the dispute, and allotted Montferrat to the Duke of Mantua; next he settled the question of the dowery of Blanche of Savoy, for the guaranty of which he set apart certain sureties; and finally he decided concerning the gift of a marriage portion. The restoration of the possession of the Duke of Mantua was made conditional on his furnishing sufficient securities to the Emperor. The parties were ordered to repair to the Imperial Court, and there to receive the final decision, which settled forever the question between the possessor and the petitioner.

The arbitral clause, or stipulation for the arbitration of difficulties that may arise, does not appear to have been frequent in the Middle Ages, or in later times, though we have had occasion to cite some examples of it. It seems, however, to have been in use between the commercial cities of Italy. Vattel relates that the Swiss, in the alliances which they contracted, whether among themselves or with foreign peoples, had recourse to it; and he justly praised them for it. We may cite two applications of it in the case of the cities of Italy and of the Swiss Cantons. In a treaty of alliance concluded in 1235, between Genoa and Venice, there is an article which reads thus: "If a difficulty should arise between the aforesaid cities, which cannot easily be settled by themselves, it shall be decided by the

arbitration of the Sovereign Pontiff; and if one of the parties violate the treaty, we agree that His Holiness shall excommunicate the offending city." The treaty signed in 1516, between Francis I and Swiss Cantons, which was known by the name of the "Perpetual Peace," contains the following clause: "Difficulties and disputes that may arise between the subjects of the King and the inhabitants of the Swiss Cantons, shall be settled by the judgment of four men of standing, two of whom shall be named by each party; which four arbitrators shall hear, in an appointed place, the parties or their attorneys; and, if they shall be divided in opinion, there shall be chosen from the neighboring countries an unbiassed man of ability, who shall join with the arbitrators in determining the question. If the matter in dispute is between a subject of the Cantons and Leagues and the King of France, the Cantons will examine the demand, and, if it is well founded, they will present it to the King; but, if the King is not satisfied with it, they may call the King before the arbitrators, who shall be selected from among impartial judges of the countries of Coire or of Valais, and whatever shall be decided by the aforesaid judges, by a judicial or amicable sentence, shall be inviolably observed without any revocation." M. de Flassan says that these stipulations were worthy of remark as examples of good faith and true wisdom. He

adds that this treaty of perpetual peace was the basis of numerous alliances, which from this date took place between France and the Swiss Cantons.

Let us finally add that in arbitrations anterior to the 17th century, it is often very difficult, sometimes impossible, clearly to separate cases of mediation from those of arbitration, either because the terminology was not very definite or the expressions used were equivocal, or because the distinction was not clear to the minds of the negotiators. Thus the bishops chosen to settle pending difficulties between Louis XI and Edward of England were styled *arbitrators or amicable mediators.*

In 1334 Philip of Valois declared himself elected judge, negotiator and arbitrator, between the King of Bohemia, the Princes of Germany, and the Duke of Brabant. Sometimes the mediation was of an obligatory nature, owing to the fear inspired by the mediator's being able to impress his views by force of arms. Thus Henri IV acted as mediator between the Republic of Venice and Pope Paul V. The Pope counted on Spain's sustaining him; but Henri IV, in order to oppose the forces of that country, made propositions to the Swiss to raise ten thousand men; so that the Pope was finally obliged to submit to the will of the French King.

But from the year 1595 we find the distinction

between mediation and arbitration clearly defined by the French ministers, who interposed between the Protestants and Catholics, who were on the point of coming to blows on the subject of the expulsion of Catholic magistrates from Aix-la-Chapelle and of their replacement by a Protestant magistracy. "We declare to you," say the ministers, on the part of His Majesty (the King of France), "that he has no design of prejudicing the authority and the rights of the Emperor, of the Empire, of any prince, or of any person; and in order that the pending dispute may be discussed in an easy and orderly way, we invite you respectively to depute peaceable and dispassionate men, who can confer with us in all confidence and safety; and we will listen patiently to whatever they may say and propose, *not as judges or arbitrators, but as mediators and amicable compositors.*"

V.

ARBITRATIONS OF THE UNITED STATES.[1]

In the conduct of its foreign relations, the Government of the United States has exerted a potent influence upon the development of international law. In the early dawn of its existence, when the rights of neutrals were little respected, Mr. Jefferson, as Secretary of State under Washington, announced for its guidance certain rules of neutral duty so broad and progressive that succeeding generations have not outgrown them. By persistent effort it has secured a wide recognition of the right of expatriation. It has also contributed to the establishment of the system of extradition. But it is not the least of its achievements that it has so constantly lent the weight of its influence and example to the substitution of reason for force in the adjustment of disputes among nations that international arbitration may be said to have been a prominent feature of its policy.

The first trial by the United States of the method of arbitration was made under the treaty with Great Britain of 1794, commonly called the Jay Treaty, which, by its fifth, sixth, and seventh articles, re-

[1] This passage on the Arbitrations of the United States is taken from a paper entitled "The United States and International Arbitration," by J. B. Moore, Professor of International Law, Columbia College, New York. See Report of the American Historical Association, 1891, pp. 65–85.

spectively, provided for three mixed commissions. That under the fifth article was organized to settle a dispute as to what river was intended under the name of the River St. Croix, which was specified in the Treaty of Peace of 1783 as forming part of our Northeastern boundary. This commission was composed of three members, each Government appointing one, and these two choosing a third. The first meeting was held at Halifax, August 30, 1796, and in order to attend it the American commissioner was forced to hire a vessel specially to transport him from Boston to Halifax, since no commercial intercourse was at the time allowed between the United States and British North America in American bottoms, and there was risk of interruption by hostile cruisers if he sailed in a British vessel, Great Britain being then at war with France. The commissioners rendered an award at Providence, R. I., October 25, 1798, holding that the Schoodiac was the river intended under the name of the St. Croix.

The commission under the sixth article of the Jay Treaty was organized to determine the compensation due to British subjects in consequence of impediments which certain of the United States had, in violation of the provisions of the Treaty of Peace, interposed to the collection of bona fide debts by British creditors. This commission, which was composed of five members, two appointed by each Government, and the fifth designated by lot,

met in Philadelphia in May, 1797. The last meeting was held July 31, 1798, when the American commissioners withdrew. Besides diversities of opinion on questions of law, the discussions at the board developed personal feeling, which was constantly inflamed by Mr. Macdonald, one of the British commissioners, who made it a point of duty freely to express all his opinions. The final rupture was caused by his submitting a resolution which declared that from the beginning of the Revolution down to the Treaty of Peace the United States, whatever may have been their relation to other powers, stood to Great Britain in an attitude of rebellion. As it has always been held by the United States that the Treaty of Peace did not grant their independence, but merely recognized it as a condition existing from the 4th of July, 1776, the date of its declaration, the American commissioners regarded the resolution as gratuitously offensive. Nevertheless, when, a few days after their withdrawal, they sent a statement of their motives to their former British colleagues, the latter began their reply by saying: "We had yesterday the honor of receiving your letter of fifty-five pages." And a further response, evidently designed to be still more sarcastic, began: "Your suspension of our official business having left us at leisure for inferior occupations, we have again perused your long

letter of the 2d instant." Both these communications were doubtless drawn by Mr. Macdonald, since they bear the impress of his style and are chiefly devoted to a vindication of his conduct. The claims which the commission failed to adjust were settled by a treaty concluded January 8, 1802, under which the British Government accepted the sum of £600,000 in satisfaction of its demands.

But the most important as well as the most interesting of the commissions under the Jay Treaty was that which sat at London under the seventh article. The American commissioners were Christopher Gore and William Pinkney; the British commissioners, John Nicholl, an eminent civilian, afterward succeeded by Maurice Swabey, and John Anstey; the fifth commissioner, chosen by lot, was Jonathan Trumbull, who had accompanied Mr. Jay to England when he negotiated the treaty. In order to avoid the misfortune of having a partisan as fifth commissioner, the four appointive members of the board adopted a happy expedient. In accordance with the requirements of the treaty, they first endeavored to select a fifth commissioner by agreement, and for that purpose each side presented a list of four persons; but as neither side would yield, it became necessary to resort to the alternative of casting lots. The next step, according to common practice, would have been for each side to place in the urn a name of its own independent selection,

with the chances in favor of his being a partisan. But at London each side selected its name from the list of four made out by the other with a view to a mutual agreement, and the result was that a well-disposed man became the fifth commissioner.

One of the first questions raised before the commission was that of its power to determine its own jurisdiction in respect to the several claims presented for its decision. The British commissioners denied the existence of the power, and absented themselves from the board, till Lord Chancellor Loughborough, to whom the question was submitted, declared "that the doubt respecting the authority of the commissioners to settle their own jurisdiction was absurd, and that they must necessarily decide upon cases being within or without their competency."

Important questions of law arose before the board in relation to contraband, the rights of neutrals, and the finality of the decisions of prize courts. These were all discussed with masterly ability, especially by Mr. Pinkney. His opinions as a member of the board Mr. Wheaton pronounced to be "finished models of judicial eloquence, uniting powerful and comprehensive argument with a copious, pure, and energetic diction." And they are almost all we possess, in a complete and authentic form, of the legal reasoning of the only advocate to whom, so far as we are informed, Chief Justice

Marshall ever paid the tribute of an enthusiastic encomium in a formal opinion of the Supreme Court. The sessions of the board were brought to a close February 24, 1804, all the business before it having been completed. It was, however, in actual session only part of the period its existence nominally covers. Besides other interruptions, there was an entire suspension of its proceedings from July 30, 1799, to February 15, 1802, pending the diplomatic adjustment of the difficulty caused by the breaking up of the commission at Philadelphia.

Beginning with the arbitrations under the Jay Treaty, every vexatious question between the United States and Great Britain that has since arisen, excepting the extraordinary train of circumstances that preceded the war of 1812, has yielded to methods of peace, arbitration being adopted where direct negotiation failed.

Like the Jay Treaty, the Treaty of Ghent, of December 24, 1814, which restored amity between the two countries, provided for three arbitrations. The first, under article 4, related to certain islands in Passamaquoddy Bay, the title to which, it was stipulated, should be determined by two persons, one appointed by each Government; and it was provided that, if they should disagree, the points of difference should be referred to a friendly sovereign or state. The commissioners held their first meeting at St. Andrews, New Brunswick,

September 23, 1816, and at their last, in the city of New York, November 24, 1817, they rendered a final award.

By the fifth article of the Treaty of Ghent, an arbitration similar in constitution to that under article 4 was provided for the ascertainment of the Northeastern boundary of the United States from the source of the river St. Croix, along a certain described course, to the river St. Lawrence. The commission under this article held its first meeting at St. Andrews September 23, 1816, and its last in the city of New York April 13, 1822. Failing to agree, the commissioners made separate reports to their Governments, and, by a convention concluded September 29, 1827, the points of difference were referred to the King of the Netherlands. His award, dated January 10, 1831, the two Governments agreed to waive, since it assumed to make a new line in place of that described in the treaties.

The third commission under the Treaty of Ghent was organized under articles 6 and 7. Under the sixth article, its duty was to determine the Northern boundary of the United States along the middle of the Great Lakes and of their communications by water to the water communication between Lakes Huron and Superior; and under the seventh article to determine the line from that point to the most northwestern point of the Lake of the Woods.

This commission was composed of two members, one appointed by each Government. On June 18, 1822, they reached an agreement under article 6; but on the line described in article 7 they failed to concur, and it was finally determined, as was the unsettled boundary under article 5, by the treaty of August 9, 1842, generally known as the Webster-Ashburton Treaty.

In this relation it may be stated that the boundary from the northwest angle of the Lake of the Woods to the Rocky Mountains, on the forty-ninth parallel of latitude, under the treaty of 1846, was delimited by a joint commission, of which the American member was appointed under an act of Congress of March 19, 1872.

By the first article of the Treaty of Ghent it was agreed that all territory, places and possessions taken by either party from the other during the war, or after the signing of the peace, should, with the exception of the disputed islands in Passamaquoddy Bay, the title to which was to be determined by arbitration, be restored without delay, and without the destruction or carrying away of any public property, or of any slaves or other private property. Differences having arisen as to Great Britain's performance of the obligation touching slaves, it was agreed by the fifth article of the treaty of October 20, 1818, to refer the dispute to the Emperor of Russia. On April 22, 1822, the

Emperor decided that Great Britain had failed to keep her obligation and must make indemnity, and on 12th of the ensuing July a convention was concluded under his mediation for the appointment of a commission to determine the amount to be paid. This commission was composed of a commissioner and an "arbitrator" appointed by each Government—four persons in all; but the two commissioners were first to examine the claims and endeavor to reach a decision, and, if they failed to agree, then to draw by lot, in each case of divergence, the name of one of the "arbitrators" to decide between them. This repetitious choice of an umpire by lot was not likely to promote consistency of decision; but the two commissioners, having met on August 25, 1823, succeeded by September 11, 1824, in agreeing on an average value for slaves taken from each State or district, and they subsequently concurred on other points. They held their last session March 26, 1827, their functions having been terminated by the ratification of a convention concluded at London, November 13, 1826, under which Great Britain paid $1,204,960 in full settlement of all the claims.

As we have already mentioned the reference of the Northeastern boundary dispute to the King of the Netherlands, under the convention of 1827, we come now to the convention concluded at London, February 8, 1853, for a general settlement of

claims pending between the United States and Great Britain. Under this convention each Government appointed a commissioner, and the two commissioners chose an umpire. This responsible post was first offered to ex-President Van Buren, who declined it, and then to Joshua Bates, an American, but a member of the house of the Barings, who accepted the trust and faithfully discharged it. Many important decisions were pronounced by this commission, some of which touched our rights in the fisheries adjacent to the northeast coasts of British North America. It also rendered awards in the famous cases of McLeod and the brig *Creole*. Its first session was held in London, September 15, 1853; its last, January 15, 1855.

By the treaty between the United States and Great Britain of June 5, 1854, in relation to Canadian fisheries and commerce, provision was made for the adjustment of any disputes as to the exclusive right of British fishermen under the treaty, by a commission to be composed of a person appointed by each Government, and of an umpire.

Ten years, lacking a week, after the adjournment of the commission under the convention of 1853, a British-American commission, similar in constitution, met in Washington, under a convention concluded July 1, 1863, to determine the compensation due to the Hudson's Bay Company and the Puget's Sound Agricul-

tural Company, two British organizations, on certain claims for damages, as well as for the transfer to the United States of all their property and rights in territory acknowledged by the treaty of 1846, in regard to limits west of the Rocky Mountains, to be under the sovereignty of that Government. The commissioners, who met January 7, 1865, chose as umpire one of America's greatest judges and jurists, Benjamin Robbins Curtis; but his services were not required, since the commissioners on September 10, 1869, concurred in an award.

While this commission was sitting, the relations between the United States and Great Britain were seriously disturbed by controversies growing out of the civil war, the northeastern fisheries, and the disputed San Juan water boundary. All these menacing differences were composed by the Treaty of Washington, of May 8, 1871, signed on the part of the United States by Hamilton Fish, Robert C. Schenck, Samuel Nelson, Ebenezer Rockwood Hoar, and George H. Williams; on the part of Great Britain, by the Earl de Grey and Ripon, Sir Stafford H. Northcote, Sir Edward Thornton, Sir John A. Macdonald, and Mountague Bernard. The right of this treaty to be regarded as the greatest treaty of arbitration the world had ever seen was only emphasized by the fact that it provided for four distinct arbitrations, the largest number ever established under a single convention. Of the four

arbitrations under the Treaty of Washington, first in order and importance was that at Geneva, the noblest spectacle of modern times, in which two great and powerful nations, gaining in wisdom and self-control, and losing nothing in patriotism or self-respect, taught the world that the magnitude of a controversy need not be a bar to its peaceful solution. On the part of the United States, the arbitrator was Charles Francis Adams; on the part of Great Britain, Sir Alexander Cockburn. There were three other arbitrators, Count Frederic Sclopis, Jacques Staempfli, afterward president of Switzerland, and the Viscount D'Itajuba, respectively designated by the King of Italy, the President of the Swiss Confederation, and the Emperor of Brazil. The American agent was J. C. Bancroft Davis; the British agent, Lord Tenterden. Caleb Cushing, William M. Evarts, and Morrison R. Waite appeared as counsel for the United States. Sir Roundell Palmer, afterward Lord Selborne, appeared for Great Britain, assisted by Mountague Bernard and Mr. Cohen. How celebrated the names both of those who negotiated and of those who executed the treaty! The demands presented by the United States to the tribunal, arising out of the acts of Confederate cruisers of British origin, and generically known as the Alabama claims, were as follows:

1. Direct losses growing out of the destruction of vessels and their cargoes.

2. The national expenditures in pursuit of those cruisers.

3. The loss in the transfer of the American merchant marine to the British flag.

4. The enhanced payments of insurance.

5. The prolongation of the war, and the addition of a large sum to the cost of the war and the suppression of the rebellion.

As to classes 3, 4 and 5, Great Britain denied the jurisdiction of the tribunal, and also its power to decide as to its own competency, a question, as we have seen, raised by the same Government and determined against it under article 7 of the Jay Treaty. Without deciding this question, the Geneva tribunal disposed of these three classes by expressing the opinion that they did not, upon principles of international law, constitute a good foundation for an award of compensation, and that they should be excluded from consideration, even if there were no difference between the two governments as to the board's competency. In regard to the second class of claims, the tribunal held that they were not properly distinguishable from the general expenses of the war carried on by the United States; and further, by a majority of three to two, that no compensation should be awarded to the United States on that head. On claims of the

first class, the tribunal awarded the sum of $15,500,000. Its first session was held December 15, 1871; its last, September 14, 1872.

The dispute as to the San Juan water boundary was referred to the Emperor of Germany, who rendered, October 21, 1872, an award in favor of the United States. Claims of British subjects against the United States, and of citizens of the United States against Great Britain (excepting the Alabama claims), arising out of injuries to persons or property during the civil war in the United States, from April 17, 1861, to April 9, 1865, were referred to a mixed commission, composed of three persons respectively appointed by the United States, Great Britain and Spain, which sat in the United States. The fourth arbitration under the Treaty of Washington, to determine the compensation, if any, due to Great Britain for privileges accorded by that treaty to the United States in the northeastern fisheries, was conducted by a commission of three persons—a citizen of the United States, a British subject, and a Belgian—which met at Halifax, June 15, 1877, and on the 23d of the following November (the American commissioner dissenting), awarded Great Britain the sum of $5,500,000.

Under a treaty concluded February 29, 1892, the United States and Great Britain submitted certain questions relating to the protection of the fur seals

in Behring Sea to a tribunal of arbitration which sat in Paris. An award was duly rendered.

From France we have several times obtained gross sums in settlement of our claims by direct negotiation. The single exception to this practice is the commission, composed of an American, a Frenchman, and a citizen of a third power, which sat in Washington from November 5, 1880, to March 31, 1884, and determined the claims of citizens of France for injuries to their persons and property during our civil war, and claims of citizens of the United States against France for like injuries during the war between that country and Germany.

With Spain, our experience in respect to the settlement of claims has been similar to that with France; but in the case of Spain we have had four arbitrations. The first, under Article 21 of the Treaty of October 27, 1795, related to claims for illegal captures of vessels by Spanish subjects. The second, under a diplomatic agreement of February 12, 1871, touching claims growing out of the insurrection in Cuba, was effected by means of a mixed commission, composed of two arbitrators, an American and a Spaniard, and an umpire, a citizen of a third power, which met in Washington, May 31, 1871. The arbitrators concluded their labors December 27, 1882; the last decision of the umpire bears date February 22, 1883. The third arbitra-

tion related to the seizure of the steamer *Colonel Lloyd Aspinwall* by the Spanish authorities in 1870. An award of damages was rendered in November of the same year. The fourth arbitration was the reference on February 28, 1885, to Baron Blanc, Italian minister at Madrid, of the question of the amount of damages to be paid by Spain for the admittedly wrongful seizure and detention of the American bark *Masonic*.

With our neighbor Mexico we have had two arbitrations, by means of mixed commissions, for the adjustment of miscellaneous claims, some of which were of great magnitude and importance. The first commission, under the treaty of April 11, 1839, was composed of two American and two Mexican commissioners, and an umpire, a citizen of Prussia. One of the American commissioners was William L. Marcy, a remarkable man, in regard to whom the forgetfulness of the present generation is to be lamented. The second commission, under the treaty of July 4, 1868, consisted of a board of two commissioners and an umpire, and lasted from July 31, 1869, to November 20, 1876, but some of the umpire's decisions were rendered after the labors of the commissioners were completed. Francis Lieber at one time, and Sir Edward Thornton at another, served in the capacity of umpire. A thousand and seventeen claims were presented by the United States,

and 998 by Mexico, and their aggregate amount exceeded half a billion dollars. The aggregate amount allowed was about four millions and a quarter; but it has been charged that two of the principal awards in favor of the United States were procured by fraudulent evidence, and, pending efforts to secure a competent investigation of this charge, the United States has suspended the distribution of the money paid by Mexico upon them.

Besides adjusting miscellaneous claims by arbitration, the United States and Mexico have adopted a notable arbitral measure in the convention of March 1, 1889, by which a permanent board, denominated an International Boundary Commission, is established for the determination of questions growing out of changes in the course of the Rio Grande and the Colorado river, where they form the boundary. This provision, however, is but the consummation of arbital stipulations for determining the boundary which are found in the treaties between the two countries of January 12, 1828; February 2, 1848; December 30, 1853, and July 29, 1882.

The most remarkable, however, of all the arbitral agreements between the United States and Mexico is that found in the twenty-first article of the treaty of February 2, 1848, commonly called the treaty of Guadalupe Hidalgo, to which, as a general obligation to arbitrate, all subsequent arbitral arrange-

ments between the two countries may in a measure be referable. This article reads as follows:

If unhappily any disagreement should hereafter arise between the Governments of the two Republics, whether with respect to the interpretation of any stipulation in this treaty, or with respect to any other particular concerning the political or commercial relations of the two nations, the said Governments, in the name of those nations, do promise to each other that they will endeavor, in the most sincere and earnest manner, to settle the differences so arising, and to preserve the state of peace and friendship in which the two countries are now placing themselves, using, for this end, mutual representations and pacific negotiations. And if, by these means, they should not be enabled to come to an agreement, a resort shall not, on this account, be had to reprisals, aggression, or hostility of any kind, by the one republic against the other, until the Government of that which deems itself aggrieved shall have maturely considered, in the spirit of peace and good neighborship, whether it would not be better that such difference should be settled by the arbitration of commissioners appointed on each side, or by that of a friendly nation. And should such course be proposed by either party, it shall be acceded to by the other, unless deemed by it altogether incompatible with the nature of the difference, or the circumstances of the case.

The United States and Haiti have had three arbitrations. By a protocol signed May 24, 1884, they referred to the Hon. William Strong, formerly one

of the justices of the Supreme Court of the United States, two claims against Haiti, known as those of Pelletier and Lazare, involving questions of administrative and judicial procedure. His awards, dated June 13, 1885, were adverse to Haiti. But the United States has thus far declined to enforce them on the ground that in the case of Lazare the award was shown by alleged after-discovered evidence to have been unjust; and that, in the case of Pelletier, the arbitrator erroneously conceived and declared himself to be compelled by the terms of the protocol to award, on a single question of strict law, compensation upon a claim which he obviously regarded as immoral and unjust.

On March 7, 1885, the American minister at Port au Prince and the Haitien minister of foreign affairs agreed upon a mixed commission of two Americans and two Haitiens to adjust the claims of citizens of the United States growing out of civil disturbances in the island. The labors of the commission were completed on the 24th of the following month.

While these claims were pending, the imprisonment of C. A. Van Bokkelen, a citizen of the United States, at Port au Prince for debt, and the decision by the Haytien courts that because he was an alien he could not obtain his liberty by an assignment for the benefit of his creditors, occasioned a dispute both as to the treaty guaranty of full legal

rights to citizens of the one country in the jurisdiction of the other, and as to the finality of the denial by the Haitien tribunals of a claim of right made in virtue of an international obligation. Under a protocol signed May 22, 1888, Mr. Alexander Porter Morse, of the city of Washington, who was named as arbitrator, rendered December 4, 1888, an award adverse to Haiti and allowed the claimant suitable damages.

Only once have members of our arbitral boards been charged with fraud. But the conduct of the claims commission at Caracas under the convention of April 25, 1866, was so seriously impeached that the United States and Venezuela by a treaty concluded December 5, 1885, agreed to have the claims reheard by a new commission. This commission, composed of an American, a Venezuelan, and a third commissioner chosen by the other two, who was also an American, sat at Washington from September 3, 1889, to September 2, 1890. Its proceedings were characterized by a conscientious and impartial discharge of duty.

Since the adjournment of this commission another arbitration between the United States and Venezuela has taken place, under a convention concluded January 19, 1892, for the settlement of the claim of the Venezuela Steam Transportation Company, an American company, for the seizure of its

steamers on the Orinoco. An award was made in favor of the United States.

With Colombia there have been three mixed commissions, each composed of two commissioners and an umpire. The first and second were organized under conventions concluded September 10, 1857, and February 10, 1864, and before both of them came important cases touching our rights on the Isthmus of Panama under the treaty with New Granada of 1846. The third commission, appointed under a diplomatic agreement of August 17, 1874, awarded the sum of $33,401 for the capture of the American steamer *Montijo* by insurgents in the State of Panama. For the adjustment of miscellaneous claims, we have also had two similarly constituted commissions with Peru, under conventions of January 12, 1863, and December 4, 1868; one with Costa Rica, under the treaty of July 2, 1860, and one with Ecuador, under the treaty of November 25, 1862. Besides joining with Peru in mixed commissions, the United States by a convention concluded December 20, 1862, agreed to refer two claims against that Government for the seizure and confiscation of the vessels *Georgiana* and *Lizzie Thompson* to the King of the Belgians. His Majesty, however, declined the trust, and on July 9, 1864, Mr. Seward, then Secretary of State, informed the Peruvian minister in Washington that the United States would not pursue the subject further.

After first making a naval demonstration, the United States by a convention signed February 4, 1859, agreed to arbitrate the claims made against Paraguay by the United States and Paraguay Navigation Company. A commission composed of a representative of each Government decided August 13, 1860, that the claim was not well founded. On the ground that the convention admitted liability and that the commissioners, by going into the merits of the case, had exceeded their competency, the United States repudiated the award, and has since endeavored to settle the claim by negotiation.

Another arbitration not permitted to end agitation was the submission to Louis Napoleon, under a treaty signed February 26, 1851, of the claim made by the United States against Portugal for the latter's non-fulfilment of neutral duty, in suffering the destruction on September 27, 1814, in the port of Fayal, in the Azores, of the American privateer *General Armstrong* by a British fleet. The arbitrator held that the privateer was the aggressor, and made an award adverse to the claim. On various grounds, among which was the charge that the case of the United States was incompletely submitted, the claimants sought to have the award set aside. This course the United States very properly declined to take, but it subsequently paid the claimants from its own treasury. Another arbitration between the United States and Portugal, under

a protocol signed June 13, 1891, to which Great Britain is also a party, respecting the seizure by the Portuguese Government of the Delagoa Bay Railway and the annulment of its charter, is now pending before three Swiss jurists at Berne.

Under a convention concluded November 10, 1858, the United States and Chile referred to the King of the Belgians a claim growing out of the seizure of the proceeds of the cargo of the American brig *Macedonian* by the famous Lord Cochrane, founder of the Chilean navy. An award was made May 15, 1863, in favor of the United States. Under a treaty concluded August 7, 1892, the United States and Chile provided for a general arbitration of claims by means of a mixed commission, which sat at Washington.

As submissions of claims to foreign ministers, we may class that of the claim against Brazil for the loss of the whale ship *Canada*, to Sir Edward Thornton, British minister at Washington, under a protocol of March 14, 1870; and that of the claim of Carlos Butterfield against Denmark, for the firing on one vessel and the detaining of another in the Danish West Indies, to Sir Edmund Monson, British Minister at Athens, under a treaty signed December 6, 1888. In the case of the *Canada*, the award was favorable to the United States; in the case of Butterfield, adverse.

Besides submitting its own controversies to arbi-

tration, the United States or its representatives have not infrequently discharged an arbitral or mediatorial function. On four occasions the arbitrator has been the President: (1) Under a protocol between Great Britain and Portugal of January 7. 1869, touching claims to the island Bulama; (2) under a treaty between the Argentine Republic and Paraguay of February 3, 1876, to settle a boundary dispute; (3) under a treaty between Costa Rica and Nicaragua of December 24, 1886, to settle boundary and other questions; (4) under a treaty between the Argentine Republic and Brazil of September 7, 1889, to settle a boundary dispute.

On four occasions a minister of the United States has acted as arbitrator: (1) In 1873 the envoys of the United States and Italy at Rio de Janeiro rendered a decision upon the claim of the Earl of Dundonald, a British subject, against Brazil; (2) in the same year the minister of the United States at Santiago was appointed arbitrator between Chile and Bolivia in respect to some disputed accounts; (3) in 1874 the minister of the United States at Rome determined a boundary dispute between Italy and Switzerland; (4) in 1875 the minister of the United States at Bogota rendered an award on certain claims of Great Britain against Colombia.

The mediatorial services of the United States have been numerous. One of the most important is that performed by the Secretary of State in effecting, on

April 11, 1871, between Spain on the one hand and Chile, Peru, Ecuador, and Bolivia on the other, an armistice which can not, according to its terms, be broken by any of the belligerents except after notification through the Government of the United States of its intention to renew hostilities. Another important mediatorial service was that rendered in 1881 to Chile and the Argentine Republic by the ministers of the United States at Santiago and Buenos Ayres, in effecting by the exercise of their good offices an adjustment of a long-standing boundary dispute.

VI.

PARTIAL LIST OF MODERN ARBITRATIONS.

1. United States and Brazil, March 14, 1870.
2. United States and Chile, November 10, 1858.
3. United States and Chile, August 7, 1892.
4. United States and Colombia, September 10, 1857.
5. United States and Colombia, February 10, 1864.
6. United States and Colombia, August 17, 1874.
7. United States and Costa Rica, July 2, 1860.
8. United States and Denmark, December 6, 1888.
9. United States and Ecuador, November 26, 1862.
10. United States and Ecuador, February 28, 1893 (pending).
11. United States and France, January 15, 1880.
12. United States and Great Britain, November 19, 1794, Articles 4 and 5.
13. United States and Great Britain, November 19, 1794, Article 6.
14. United States and Great Britain, November 19, 1794, Article 7.
15. United States and Great Britain, December 24, 1814, Article 4.
16. United States and Great Britain, December 24, 1814, Article 5.
17. United States and Great Britain, December 24, 1814, Articles 6 and 7.

18. United States and Great Britain, October 20, 1818, Article 5.
19. United States and Great Britain, July 12, 1822.
20. United States and Great Britain, September 29, 1827.
21. United States and Great Britain, February 8, 1853.
22. United States and Great Britain, June 5, 1854, Article 1.
23. United States and Great Britain, July 1, 1863.
24. United States and Great Britain, May 8, 1871, Articles 1–9.
25. United States and Great Britain, May 8, 1871, Articles 12–17.
26. United States and Great Britain, May 8, 1871, Articles 18–25.
27. United States and Great Britain, May 8, 1871, Articles 34–42.
28. United States and Great Britain, February 29, 1892.
29. United States and Haiti, May 24, 1884.
30. United States and Haiti, March 7, 1885.
31. United States and Haiti, May 22, 1888.
32. United States and Mexico, April 11, 1839.
33. United States and Mexico, July 4, 1868.
34. United States and Mexico, March 1, 1889.
35. United States and Paraguay, February 4, 1859.
36. United States and Peru, December 20, 1862.
37. United States and Peru, January 12, 1863.

38. United States and Peru, December 4, 1868.
39. United States and Portugal, February 26, 1851.
40. United States and Portugal, June 13, 1891.
41. United States and Spain, October 27, 1795, Article 21.
42. United States and Spain, 1870.
43. United States and Spain, February 11–12, 1871.
44. United States and Spain, February 28, 1885.
45. United States and Venezuela, April 25, 1866.
46. United States and Venezuela, December 5, 1885.
47. United States and Venezuela, January 19, 1892.
48. Great Britain and Argentine Republic. Arbitrator, President of Chile. Subject: Losses arising out of a decree prohibiting vessels from Montevideo from entering Argentine ports. Award, August 1, 1870.
49. Great Britain and Brazil. Arbitrator, King of the Belgians. Subject: Arrest, etc., of officers of H. M. S. "Forte." Award, June 18, 1863.
50. Great Britain and Brazil. Arbitrators, Ministers of Italy and the United States at Rio de Janeiro. Subject: Lord Dundonald's claims. Award, 1873.
51. Great Britain and Chile. Arbitrator, Mixed Commission. Subject: British Claims. Awards, 1884–1887.
52. Great Britain and Colombia. Arbitrator, Min-

ister of the United States at Bogota. Subject: Claims. Award, 1875.

53. Great Britain and France. Arbitrator, King of Prussia. Subject: The Portendic Claims. Award, November 30, 1843.
54. Great Britain and France. Arbitrator, Joint Commission. Subject: British Mineral Oil Claims. Award, January 5, 1874.
55. Great Britain and France. Arbitrator, R. B. Martin, M. P. Subject: Greffühle Concessions. Award, July 19, 1893.
56. Great Britain and Germany. Arbitrator, Joint Commission. Subject: Claims of German subjects to lands in Fiji. Award, April, 1885.
57. Great Britain and Germany. Arbitrator, Baron Lambermont. Subject: Rights in the Island of Lamu. Award, August 17, 1889.
58. Great Britain and the Netherlands. Arbitrator to be named by Emperor of Russia. Subject: Arrest of the Captain of the "Costa Rica Packet." Pending.
59. Great Britain and Nicaragua. Arbitrator, Emperor of Austria. Subject: Mosquito Indians. Award, July 2, 1881.
60. Great Britain and Peru. Arbitrator, Senate of Hamburg. Subject: Claim against Peru. Award, April 12, 1864.
61. Great Britain and Portugal. Arbitrator, Senate

of Hamburg. Subject: Claim against Portugal. Award, February 7, 1856.

62. Great Britain and Portugal. Arbitrator, Senate of Hamburg. Subject: Claim against Portugal. Award, 1861.

63. Great Britain and Portugal. Arbitrator, President of the United States. Subject: Sovereignty over the Island of Bulama. Award, April 21, 1870.

64. Great Britain and Portugal. Arbitrator, President of the French Republic. Subject: Boundary of Territories on Delagoa Bay. Award, July 24, 1875.

65. Great Britain and Portugal (and the United States). Arbitrators, Swiss Jurists. Subject: Delagoa Bay Railway. Pending.

66. Great Britain and South African Republic. Arbitrator, Orange Free State. Subject: Southwestern Boundary of the South African Republic. Award, August 5, 1885.

67. Great Britain and Spain. Arbitrator, Joint Commission. Subject: Collision between a Spanish man-of-war and a British merchant vessel. Award, December, 1887.

68. Great Britain and Venezuela. Arbitrator, Mixed Commission. Subject: Claims. Under Treaty of September 21, 1868.

(The arbitrations between Great Britain and the United States are given above in the list of ar-

bitrations between the United States and other powers.)

69. Chile and Bolivia. Arbitrator, Minister of the United States States at Santiago. Subject: Disputed Accounts. Award, 1875.
70. Peru and Japan. Arbitrator, Emperor of Russia. Subject: Territorial Jurisdiction of Japan. Award, May 17-29, 1875.
71. Italy and Switzerland. Arbitrator, Minister of the United States at Rome. Subject: Boundary. Award, 1875.
72. Italy and Colombia. Arbitrator, President of the United States. Subject: Claim of Ernesto Cerruti, an Italian subject, against Colombia. Pending.
73. Argentine Republic and Paraguay. Arbitrator, President of the United States. Subject: Boundary. Under Treaty of February 3, 1876.
74. China and Japan. Arbitrator, British Minister at Peking. Subject: Murder of a Japanese in Formosa. Award, 1876.
75. France and Nicaragua. Arbitrator, Court of Cassation of France. Subject: Seizure of the cargo of a French ship at Corinto. Award, July 29, 1880.
76. The Netherlands and the Dominican Republic. Arbitrator, President of the French Republic. Subject: Confiscation of the Dutch ship,

"Havana-Packer." Under agreement of March, 1881.

77. Colombia and Venezuela. Arbitrator, King of Spain. Subject: Boundaries. Under Treaty of September 14, 1881.
78. Costa Rica and Nicaragua. Arbitrator, President of the United States. Subject: Validity of Treaty, Boundaries, Rights of Navigation. Under Treaty of December 24, 1886.
79. France and the Netherlands. Arbitrator, Emperor of Russia. Subject: Boundary between French and Dutch Guianas. Under Treaty of November 29, 1888.
80. Brazil and the Argentine Republic. Arbitrator, President of the United States. Subject: Boundaries. Under Treaty of September 7, 1889.

The foregoing list, which does not purport to be complete, does not include certain arbitrations now pending.

VII.

RESOLUTIONS OF THE CONGRESS OF THE UNITED STATES AND OF THE BRITISH HOUSE OF COMMONS.

The Senate of the United States on February 14, 1890, and the House of Representatives on April 3, 1890, adopted the following concurrent resolution:

Resolved by the Senate (*the House of Representatives concurring*), That the President be and is hereby requested to invite from time to time, as fit occasions may arise, negotiations with any government with which the United States has or may have diplomatic relations, to the end that any differences or disputes arising between the two governments which cannot be adjusted by diplomatic agency may he referred to arbitration, and be peaceably adjusted by such means.

The British House of Commons, on July 16, 1893, adopted the following resolution:

Resolved, That this House has learnt with satisfaction that both Houses of the United States Congress have, by resolution, requested the President to invite from time to time, as fit occasions may arise, negotiations with any government with which the United States have or may have diplomatic relations, to the end that any differences or

disputes arising between the two governments which cannot be adjusted by diplomatic agency may be referred to arbitration and peaceably adjusted by such means; and that this House, cordially sympathizing with the purpose in view, expresses the hope that Her Majesty's Government will lend their ready co-operation to the Government of the United States upon the basis of the foregoing resolution.

VIII.

RULES PROPOSED BY THE INSTITUTE OF INTERNATIONAL LAW.

The subject of rules for the regulation of the procedure of international tribunals of arbitration was discussed by the Institute of International Law, at its session at Geneva in 1874, and at its session at the Hague in 1875. At the latter session provisional rules were adopted. The members and associates of the Institute present on this occasion were M. Asser, counsellor to the Ministry of Foreign Affairs of the Netherlands, and professor of law at Amsterdam; the Right Hon. Mountague Bernard, of Oxford; M. Besobrasoff, member of the Academy of Sciences, St. Petersburg; Bluntschli, of the University of Heidelberg; Prof. Brocher, of the University of Geneva; Dr. von Bulmerincq, a privy councillor, and professor at the University of Heidelberg; David Dudley Field, of New York; W. E. Hall, of London; M. de Martens, of the University of St. Petersburg; M. Moynier, of Geneva; Baron Neumann, professor at the University of Vienna, member of the Chamber of Peers; M. de Parieu, member of the Senate of France and of the Institute of France; M. Pierantoni, professor at the University of Rome, Senator of the Kingdom of Italy; M. Rivier, professor at the University of Brussels; M. Rolin-Jaequemyns,

of Ghent; M. Albéric Rolin, of Ghent; Sir Travers Twiss, of London; and Mr. Westlake, of London. The rules adopted were as follows:

The Institute, desiring that recourse to arbitration for the settlement of international difficulties should be practised more and more by civilized peoples, hopes to contribute toward the realization of this end by proposing for courts of arbitration the following provisional rules of procedure. It recommends them for adoption, in whole or in part, by states that may conclude agreements to arbitrate.

ART. 1.—The agreement to arbitrate is concluded by a valid international treaty.

It may be so concluded:

(*a.*) *By anticipation*, whether for any and every difference, or for those of a certain class specially to be designated, that may arise between the contracting states;

(*b.*) For one or more differences *already existing*.

ART. 2.—The agreement to arbitrate gives to each of the contracting parties the right to appeal to the tribunal of arbitration which it designates for the decision of the question in dispute. If the agreement to arbitrate does not designate the number and names of the arbitrators, the tribunal of arbi-

tration shall proceed according to the provisions laid down in the agreement to arbitrate, or in some other agreement.

If there be no such provisions, each of the contracting parties shall choose an arbitrator, and the two arbitrators thus appointed shall choose a third arbitrator or name a third person who shall appoint him.

If the two arbitrators appointed by the parties cannot agree on the choice of a third arbitrator, or if one of the parties refuses the co-operation which, according to the agreement to arbitrate, he should give to the formation of the court of arbitration, or if the person named refuses to choose, the agreement to arbitrate is annulled.

ART. 3.—If in the first instance, or because they have not been able to agree on the choice of arbitrators, the contracting parties have agreed that the tribunal of arbitration should be formed by a third person named by them, and if the person named undertakes the formation of the tribunal, the course to be followed shall depend, first, on the provisions of the agreement to arbitrate. If there be no such provisions, then the third person so named may either himself appoint the arbitrators, or propose a certain number of persons, among whom each of the parties shall choose.

ART. 4.—The following shall be eligible for ap-

pointment as international arbitrators: Sovereigns and heads of governments, without any restriction; and all persons who are competent according to the law of their country to exercise the functions of arbitrator.

ART. 5.—If the parties have agreed upon individual arbitrators, the incompetency of, or the allegation of a valid objection to, one of such arbitrators, invalidates the whole agreement to arbitrate, unless the parties can agree upon another competent arbitrator.

If the agreement to arbitrate does not prescribe the manner of selecting another arbitrator in case of incompetency, or of the allegation of a valid objection, the method prescribed for the original choice must again be followed.

ART. 6.—The acceptance of the office of arbitrator must be in writing.

ART. 7.—If an arbitrator refuses the office, or if he resigns after having accepted it, or if he dies, or becomes mentally incompetent, or if he is validly challenged on account of inability to serve according to the terms of Art. 4, then the provisions of Art. 5 shall be in force.

ART. 8.—If the seat of the tribunal of arbitration is not named either by the agreement to arbitrate or by a subsequent agreement of the parties, it shall

be named by the arbitrator or by a majority of the arbitrators.

The tribunal of arbitration is authorized to change the place of its sessions only in case the performance of its duties at the place agreed upon is impossible or manifestly dangerous.

ART. 9.—The tribunal of arbitration, if composed of several members, chooses a president from among its own number, and appoints one or more secretaries.

The tribunal of arbitration decides in what language or languages its deliberations and the pleadings of the litigants shall be conducted, and the documents and other evidence be presented. It keeps minutes of its sessions.

ART. 10.—The tribunal of arbitration sits with all its members present. It may, however, delegate one or more of its members, or even commission outside persons, to draw up certain preliminary proceedings.

If the arbitrator is a state, or its head, a commune or other corporation, an authority, a faculty of law, a learned society, or the actual president of the commune, corporation, authority, faculty, or society, all the pleadings may be conducted, with the consent of the parties, before a commissioner appointed *ad hoc* by the arbitrator. A protocol of such pleadings shall be kept.

ART. 11.—No arbitrator can, without the consent of the litigants, name a substitute for himself.

ART. 12.—If the agreement to arbitrate, or a subsequent agreement of the parties, prescribes the method of procedure to be followed by the court of arbitration, or prescribes to it the observance of a definite and positive law of procedure, the tribunal of arbitration must conform thereto. If there be no such provision, the procedure to be followed shall be freely prescribed by the tribunal of arbitration, which is in such case required to conform only to the rules which it has informed the parties it would observe.

The control of the discussions belongs to the president of the tribunal.

ART. 13.—Each of the parties may appoint one or more persons to represent it before the tribunal.

ART. 14.—Exceptions based on the incompetency of the arbitrators must be taken before any others. In case of the silence of the parties, any later contestation is excluded, except for cases of incompetency that have subsequently supervened.

The arbitrators must pronounce upon the exceptions taken to the incompetency of the court of arbitration (subject to the appeal referred to in the next paragraph) and must pronounce in accordance with the provisions of the agreement to arbitrate.

There shall be no appeal from the preliminary

judgments on the question of competency, except in connection with the appeal from the final judgment in the arbitration.

In case the doubt on the question of competency depends upon the interpretation of a clause of the agreement to arbitrate, the parties are deemed to have given to the arbitrators full power to settle the question, unless there be a clause to the contrary.

ART. 15.—Unless there be provisions to the contrary in the agreement to arbitrate, the tribunal of arbitration has the right:

1. To determine the forms, and the periods of time, in which each litigant must, by his duly authorized representatives, present his conclusions, support them in fact and in law, lay his proofs before the tribunal, communicate them to his opponent, and produce the documents the production of which his opponent demands.

2. To consider as conceded the claims of each party which are not plainly contested by his opponent, as for instance the alleged contents of documents which the opponent, without sufficient reason, fails to produce.

3. To order new hearings of the parties, and to demand from each of them the clearing up of doubtful points.

4. To make rules of procedure (for the conduct

of the case), to compel the production of evidence, and, if necessary, to require of a competent court the performance of judicial acts which the tribunal of arbitration is not qualified to perform, notably the swearing of experts and of witnesses.

5. To decide with its own free judgment on the interpretation of the documents produced, and in general on the merits of the evidence presented by the litigants.

The forms and the periods of time, mentioned in clauses 1 and 2 of the present article, shall be determined by the arbitrators by a preliminary order.

ART. 16.—Neither the parties nor the arbitrators can officially implead other states or third persons, without the special and express authorization of the agreement to arbitrate, and the previous consent of such third parties.

The voluntary intervention of a third party can be allowed only with the consent of the parties who originally concluded the agreement to arbitrate.

ART. 17.—Cross-actions can be brought before the tribunal of arbitration only so far as they are provided for by the original agreement to arbitrate, or as the parties and the tribunal may agree to allow them.

ART. 18.—The tribunal of arbitration decides in accordance with the principles of international law,

unless the agreement to arbitrate prescribes different rules or leaves the decision to the free judgment of the arbitrators.

ART. 19.—The tribunal of arbitration cannot refuse to pronounce judgment, on the pretext that it is insufficiently informed either as to the facts, or as to the legal principles to be applied.

It must decide finally each of the points at issue. If, however, the agreement to arbitrate does not require a final decision to be given simultaneously on all the points, the tribunal may, while deciding finally on certain points, reserve others for subsequent disposition.

The tribunal of arbitration may render interlocutory or preliminary judgments.

ART. 20.—The final decision must be pronounced within the period of time fixed by the agreement to arbitrate, or by a subsequent agreement. If there be no other provision, a period of two years, from the day of the conclusion of the agreement to arbitrate, is to be considered as agreed on. The day of the conclusion of the agreement is not included, nor the time during which one or more arbitrators have been prevented, by *force majeure*, from fulfilling their duties.

In case the arbitrators, by interlocutory judgments, order preliminary proceedings, the period is to be extended for a year.

ART. 21.—Every judgment, final or provisional, shall be determined by a majority of all the arbitrators appointed, even in case one or more of them should refuse to concur in it.

ART. 22.—If the tribunal of arbitration finds the claims of neither of the parties justified, it shall so declare, and, unless limited in this respect by the agreement to arbitrate, shall determine the true state of the law with regard to the parties to the dispute.

ART. 23.—The arbitral sentence must be drawn up in writing, and contain an exposition of the grounds of the decision, unless exemption from this be stipulated in the agreement to arbitrate. It must be signed by each of the members of the court of arbitration. If a minority refuse to sign it, the signature of the majority is sufficient, with a written statement that the minority refuse to sign.

ART. 24.—The sentence, together with the grounds, if an exposition of them be given, is formally communicated to each party. This is done by communicating a certified copy to the representative of each party, or to its attorney appointed *ad hoc*.

After the sentence has been communicated to the representative or attorney of one of the parties, it cannot be changed by the tribunal of arbitration.

Nevertheless, the tribunal has the right, so long as the time limits of the agreement to arbitrate have not expired, to correct errors in writing or in reckoning, even though neither of the parties should suggest it; and to complete the sentence on points at issue not decided, on the suggestion of one of the parties, and after giving the other party a hearing. An interpretation of the sentence is allowable only on demand of both parties.

ART. 25.—The sentence duly pronounced decides, within the scope of its operation, the point at issue between the parties.

ART. 26.—Each party shall bear its own costs, and half of the costs of the tribunal of arbitration, without prejudice to the decision of the court as to the indemnity that one or the other party may be condemned to pay.

ART. 27.—The sentence of arbitration shall be void in case of the avoidance of the agreement to arbitrate, or of an excess of power, or of proved corruption of one of the arbitrators, or of essential error.

IX.

PROJECT OF A PERMANENT TREATY OF ARBITRATION BETWEEN THE UNITED STATES AND SWITZERLAND, ADOPTED BY THE SWISS FEDERAL COUNCIL, JULY 24, 1883.

1. The contracting parties agree to submit to an arbitral tribunal all difficulties which may arise between them during the existence of the present treaty, whatever may be the cause, the nature or the object of such difficulties.

2. The arbitral tribunal shall be composed of three persons. Each party shall designate one of the arbitrators. It shall choose him from among those who are neither citizens of the state nor inhabitants of its territory. The two arbitrators thus chosen shall themselves choose a third arbitrator; but if they should be unable to agree, the third arbitrator shall be named by a neutral government. This government shall be designated by the two arbitrators, or, if they cannot agree, by lot.

3. The arbitral tribunal, when called together by the third arbitrator, shall draw up a form of agreement which shall determine the object of the litigation, the composition of the tribunal and the duration of its powers. The agreement shall be

signed by the representatives of the parties and by the arbitrators.

4. The arbitrators shall determine their own procedure. In order to secure a just result, they shall make use of all the means which they may deem necessary, the contracting parties engaging to place them at their disposal. Their judgment shall become executory one month after its communication.

5. The contracting parties bind themselves to observe and loyally to carry out the arbitral sentence.

6. The present treaty shall remain in force for a period of thirty years after the exchange of ratifications. If notice of its abrogation is not given before the beginning of the thirtieth year, it shall remain in force for another period of thirty years, and so on.

X.

PLAN OF A PERMANENT TRIBUNAL OF ARBITRATION, ADOPTED BY THE INTERNATIONAL AMERICAN CONFERENCE, APRIL 18, 1890.

The delegates from North, Central and South America, in Conference assembled :

Believing that war is the most cruel, the most fruitless, and the most dangerous expedient for the settlement of international differences ;

Recognizing that the growth of moral principles which govern political societies has created an earnest desire in favor of the amicable adjustment of such differences ;

Animated by the conviction of the great moral and material benefits that peace offers to mankind, and trusting that the existing conditions of the respective nations are especially propitious for the adoption of arbitration as a substitute for armed struggles ;

Convinced by reason of their friendly and cordial meeting in the present Conference that the American Republics, controlled alike by the principles, duties and responsibilities of popular government, and bound together by vast and increasing mutual interests, can, within the sphere of their own action, maintain the peace of the continent, and the good will of all its inhabitants ;

And considering it their duty to lend their assent to the lofty principles of peace which the most enlightened public sentiment of the world approves,

Do solemnly recommend all the Governments by which they are accredited to conclude a uniform treaty of arbitration in the articles following :

ARTICLE I.

The republics of North, Central, and South America hereby adopt arbitration as a principle of American International Law for the settlement of the differences, disputes or controversies that may arise between two or more of them.

ARTICLE II.

Arbitration shall be obligatory in all controversies concerning diplomatic and consular privileges, boundaries, territories, indemnities, the right of navigation, and the validity, construction and enforcement of treaties.

ARTICLE III.

Arbitration shall be equally obligatory in all cases other than those mentioned in the foregoing article, whatever may be their origin, nature, or object, with the single exception mentioned in the next following article.

ARTICLE IV.

The sole questions excepted from the provisions of the preceding articles are those which, in the judgment of any one of the nations involved in the controversy, may imperil its independence. In which case for such nation arbitration shall be optional; but it shall be obligatory upon the adversary power.

ARTICLE V.

All controversies or differences, whether pending or hereafter arising, shall be submitted to arbitration, even though they may have originated in occurrences antedating the present treaty.

ARTICLE VI.

No question shall be revived by virtue of this treaty, concerning which a definite agreement shall already have been reached. In such cases arbitration shall be resorted to only for the settlement of questions concerning the validity, interpretation or enforcement of such agreements.

ARTICLE VII.

The choice of arbitrators shall not be limited or confined to American states. Any Government may serve in the capacity of arbitrator which maintains friendly relations with the nation opposed to the one selecting it. The office of arbitrator may

also be entrusted to tribunals of justice, to scientific bodies, to public officials, or to private individuals, whether citizens or not of the states selecting them.

ARTICLE VIII.

The Court of Arbitration may consist of one or more persons. If of one person, he shall be selected jointly by the nations concerned. If of several persons, their selection may be jointly made by the nations concerned. Should no choice be agreed upon, each nation showing a distinct interest in the question at issue shall have the right to appoint one arbitrator on its own behalf.

ARTICLE IX.

Whenever the Court shall consist of an even number of arbitrators, the nations concerned shall appoint an umpire, who shall decide all questions upon which the arbitrators may disagree. If the nations interested fail to agree in the selection of an umpire, such umpire shall be selected by the arbitrators already appointed.

ARTICLE X.

The appointment of an umpire, and his acceptance, shall take place before the arbitrators enter upon the hearing of the questions in dispute.

ARTICLE XI.

The umpire shall not act as a member of the Court, but his duties and powers shall be limited to the decision of questions, whether principal or incidental, upon which the arbitrators shall be unable to agree.

ARTICLE XII.

Should an arbitrator or an umpire be prevented from serving by reason of death, resignation, or other cause, such arbitrator or umpire shall be replaced by a substitute to be selected in the same manner in which the original arbitrator or umpire shall have been chosen.

ARTICLE XIII.

The Court shall hold its sessions at such place as the parties in interest may agree upon, and in case of disagreement or failure to name a place the Court itself may determine the location.

ARTICLE XIV.

When the Court shall consist of several arbitrators, a majority of the whole number may act notwithstanding the absence or withdrawal of the minority. In such case the majority shall continue in the performance of their duties until they shall have reached a final determination of the questions submitted for their consideration.

ARTICLE XV.

The decision of a majority of the whole number of arbitrators shall be final both on the main and incidental issues, unless in the agreement to arbitrate it shall have been expressly provided that unanimity is essential.

ARTICLE XVI.

The general expenses of arbitration proceedings shall be paid in equal proportions by the governments that are parties thereto; but expenses incurred by either party in the preparation and prosecution of its case shall be defrayed by it individually.

ARTICLE XVII.

Whenever disputes arise, the nations involved shall appoint courts of arbitration in accordance with the provisions of the preceding articles. Only by the mutual and free consent of all such nations may those provisions be disregarded and courts of arbitration appointed under different arrangements.

ARTICLE XVIII.

This treaty shall remain in force for twenty years from the date of the exchange of ratifications. After the expiration of that period, it shall continue in operation until one of the contracting

parties shall have notified all the others of its desire to terminate it. In the event of such notice the treaty shall continue obligatory upon the party giving it for one year thereafter, but the withdrawal of one or more nations shall not invalidate the treaty with respect to the other nations concerned.

ARTICLE XIX.

This treaty shall be ratified by all the nations approving it according to their respective constitutional methods; and the ratifications shall be exchanged in the city of Washington on or before the 1st day of May, A. D. 1891.

Any other nation may accept this treaty and become a party thereto by signing a copy thereof and depositing the same with the Government of the United States; whereupon the said Government shall communicate this fact to the other contracting parties.

IN TESTIMONY WHEREOF, the undersigned plenipotentiaries have hereunto affixed their signatures and seals.

Done in the City of Washington, in copies, in English, Spanish and Portuguese, on this day of the month of one thousand eight hundred and ninety.

Mr. Blaine, in his Farewell Address to the Conference, on April 19, 1890, referring to the preceding plan of arbitration, said :

"If, in this closing hour, the Conference had but one deed to celebrate, we should dare call the world's attention to the deliberate, confident, solemn dedication of two great continents to peace, and to the prosperity which has peace for its foundation. We hold up this new *Magna Charta*, which abolishes war and substitutes arbitration between the American Republics, as the first and great fruit of the International American Conference. That noblest of Americans, the aged poet and philanthropist, Whittier, is the first to send his salutation and his benediction, declaring :

"'If in the spirit of peace the American Conference agrees upon a rule of arbitration which shall make war in this hemisphere well nigh impossible, its sessions will prove one of the most important events in the history of the world.'"

XI.

PROPOSED RULES FOR THE ORGANIZATION OF AN INTERNATIONAL TRIBUNAL OF ARBITRATION, SUBMITTED BY MESSRS. WM. ALLEN BUTLER, DORMAN B. EATON, AND CEPHAS BRAINERD, TO THE UNIVERSAL PEACE CONGRESS AT CHICAGO, IN 1893.[1]

In order to maintain peace between the high contracting parties, they agree as follows:

First.—If any cause of complaint arise between any of the nations parties hereto, the one aggrieved shall give formal notice thereof to the other, specifying in detail the cause of complaint and the redress which it seeks.

Second.—The nation which receives from another notice of any cause of complaint shall, within one month thereafter, give a full and explicit answer thereto.

Third.—If the nation complaining and the nation complained of do not otherwise, within two months after such answer, agree between themselves, they shall each appoint three members of a Joint Commission, who shall confer together, discuss the dif-

[1]These rules are based partly on manuscript rules left by the late David Dudley Field.

ferences, endeavor to reconcile them, and within one month after their appointment shall report the result to the nations appointing them respectively.

Fourth.—If the Joint Commissioners fail to agree, or the nations appointing them fail to ratify their acts, those nations shall, within twelve months after the appointment of the Joint Commission, give notice of such failure to the other parties to the treaty, and the cause of complaint shall be referred to the Tribunal of Arbitration, instituted as follows:

1. Each signatory nation shall, within one month after the ratification of this treaty, transmit to the other signatory nations the names of four persons as fit to serve on such tribunal.

2. From the list of such persons, the nations at any time in controversy shall alternately and as speedily as possible, select one after another until seven are selected, which seven shall constitute the tribunal for the hearing and decision of that controversy. Notice of each selection shall immediately be given to the permanent secretary, who shall at once notify the person so selected.

3. The tribunal thus constituted shall, by writing signed by the members or a majority of them, appoint a time and place of meeting and give notice thereof through the permanent secretary to the

parties in controversy; and at such time and place, or at other times and places to which an adjournment may be had, it shall hear the parties and decide between them, and such decision shall be final and conclusive.

4. If either of these parties fail to signify its selection of names from the lists within one month after a request from the other to do so, the other may select for it; and if any of the persons selected to constitute the tribunal shall die or fail from any cause to serve, the vacancy shall be filled by the nation which originally named the person whose place is to be filled.

Fifth.—Each of the parties to this treaty binds itself to unite, as herein prescribed, in forming a tribunal of arbitration for all cases in controversy between any of them not adjusted by a Joint Commission, as hereinbefore provided, except that such arbitration shall not extend to any question respecting the independence or sovereignty of a nation, or its equality with other nations, or its form of government or its internal affairs.

1. The Tribunal of Arbitration shall consist of seven members, and shall be constituted in a manner provided in the foregoing fourth rule; but it may, if the nations in controversy so agree, consist of less than seven persons, and in that case the members of the tribunal shall be selected jointly

by them from the whole list of persons named by the signatory nations. Each nation claiming a distinct interest in the question at issue shall have the right to appoint one additional arbitrator on its own behalf.

2. When the tribunal shall consist of several arbitrators a majority of the whole number may act, notwithstanding the absence or withdrawal of the minority. In such case the majority shall continue in the performance of their duties until they shall have reached a final determination of the question submitted for their consideration.

3. The decision of a majority of the whole number of arbitrators shall be final, both on the main and incidental issues, unless it shall have been expressly provided by the nations in controversy that unanimity is essential.

4. The expenses of an arbitration proceeding, including the compensation of the abitrators, shall be paid in equal proportions by the nations that are parties thereto, except as provided in subdivision 6 of this article; but expenses of either party in the preparation and prosecution of its case shall be defrayed by it individually.

5. Only by the mutual consent of all the signatory nations may the provisions of these articles be disregarded and courts of arbitration appointed under different arrangements.

6. A permanent secretary shall be appointed by agreement between the signatory nations, whose office shall be at Berne, Switzerland, where the records of the tribunal shall be preserved. The permanent secretary shall have power to appoint two assistant secretaries, and such other assistants as may be required for the performance of the duties incident to the proceedings of the tribunal.

The salary of the permanent secretary, assistant secretaries and other persons connected with his office shall be paid by the signatory nations, out of a fund to be provided for that purpose, to which each of such nations shall contribute in a proportion corresponding to the population of the several nations.

7. Upon the reference of any controversy to the tribunal and after the selection of the arbitrators to constitute the tribunal for the hearing of such controversy, it shall fix the time within which the case, counter-case, reply, evidence and arguments of the respective parties shall be submitted to it, and shall make rules regulating the proceedings under which that controversy shall be heard.

8. The tribunal as first constituted, for the determination of a controversy, may establish general rules for practice and proceeding before all tribunals assembled for the hearing of any controversy submitted under the provisions of these articles,

which rules may from time to time be amended or changed by any subsequent tribunal; and all such rules shall immediately, upon their adoption, be notified to the various signatory powers.

Sixth.—If any of the parties to this treaty shall begin hostilities against another party without having first exhausted the means of reconciliation herein provided for, or shall fail to comply with the decisions of the Tribunal of Arbitration, within one month after receiving notice of the decision, the chief executive of every other nation, party hereto, shall issue a proclamation declaring [such] hostilities or failure, to be an infraction of this treaty, and at the end of thirty days thereafter, the ports of the nations from which the proclamation proceeds shall be closed against the offending or defaulting nation, except upon condition that all vessels and goods coming from or belonging to any of its citizens shall, as a condition, be subjected to double the duties to which they would otherwise have been subjected. But the exclusion may be at any time revoked by another proclamation of like authority, issued at the request of the offending nation declaring its readiness to comply with this treaty in its letter and spirit.

Seventh.—A conference of representatives of the nations, parties to this treaty, shall be held every alternate year, beginning on the first of January,

at the capital of each in rotation, and in the order of the signatures to this treaty, for the purpose of discussing the provisions of the treaty, and desired amendments thereof, averting war, facilitating intercourse and preserving peace.

XII.

RESOLUTION ADOPTED BY THE INTERPARLIAMENTARY CONFERENCE AT BRUSSELS, IN 1895, CONCERNING THE ESTABLISHMENT OF A PERMANENT COURT OF INTERNATIONAL ARBITRATION.

In 1889 certain members of the British and French parliaments formed at Paris a Parliamentary Union, to be composed of members of the legislative assemblies of various countries, for the purpose of considering questions relating to the preservation of peace, and especially to the development of international arbitration. This association has, each year since its formation, held a conference at some city in Europe. At its session at Brussels, in 1895, it adopted the following resolution concerning the establishment of a permanent Court of International Arbitration:

The Interparliamentary Conference, assembled at Brussels, considering the frequency of cases of international arbitration and the number and extension of arbitral clauses in treaties, and desiring to see an international justice and an international jurisdiction established on a stable basis, charges its president to recommend to the favorable consideration of the government of civilized states the

following provisions, which may be made the subject of a diplomatic conference or of special conventions:

1. The high contracting parties constitute a PERMANENT COURT OF INTERNATIONAL ARBITRATION to take cognizance of differences which they shall submit to its decision.

In cases in which a difference shall arise between two or more of them, the parties shall decide whether the contest is of a nature to be brought before the Court, under the obligations which they have contracted by treaty.

2. The Court shall sit at

Its seat may be transferred to another place by the decision of a majority of three-fourths of the adhering powers.

The government of the state in which the Court is sitting guarantees its safety as well as the freedom of its discussions and decisions.

3. Each signatory or adhering government shall name two members of the Court.

Nevertheless, two or more governments may unite in designating two members in common.

The members of the Court shall be appointed for a period of five years, and their powers may be renewed.

4. The support and compensation of the members

of the Court shall be defrayed by the state which names them.

The expenses of the Court shall be shared equally by the adhering states.

5. The Court shall elect from its members a president and a vice-president for a period of a year. The president is not eligible for re-election after a period of five years. The vice-president shall take the place of the president in all cases in which the latter is unable to act.

The Court shall appoint its clerk and determine the number of employees which it deems necessary.

The clerk shall reside at the seat of the Court and have charge of its archives.

6. The parties may, by common accord, lay their suit directly before the Court.

7. The Court is invested with jurisdiction by means of a notification given to the clerk, by the parties, of their intention to submit their difference to the Court.

The clerk shall bring the notification at once to the knowledge of the president.

If the parties have not availed themselves of their privilege of bringing their suit directly before the Court, the president shall designate two members who shall constitute a tribunal to act in the first instance.

On the request of one of the parties, the members called to constitute this tribunal shall be designated by the Court itself.

The members named by the states that are parties to the suit shall not be a part of the tribunal.

The members designated to sit cannot refuse to do so.

8. The form of the submission shall be determined by the disputing governments, and, in case they are unable to agree, by the tribunal, or, when there is occasion for it, by the Court.

There may also be formulated a counter case.

9. The judgment shall disclose the reasons on which it is based, and it shall be pronounced within a period of two months after the closure of the discussions. It shall be notified to the parties by the clerk.

10. Each party has the right to interpose an appeal within three months after the notification of the judgment.

The appeal shall be brought before the Court. The members named by the states concerned in the litigation, and those who formed part of the tribunal, cannot sit in the appeal.

The case shall proceed as in the first instance. The judgment of the Court shall be definitive. It shall not be attacked by any means whatsoever.

11. The execution of the decisions of the Court

is committed to the honor and good faith of the litigating states.

The Court shall make a proper application of the agreements of parties who, in an arbitration, have given it the means of attaching a pacific sanction to its decisions.

12. The nominations prescribed by Article 3 shall be made within six months from the exchange of the ratifications of the convention. They shall be brought, by diplomatic channels, to the knowledge of the adhering powers.

The Court shall assemble and fully organize one month after the expiration of that period, whatever may be the number of its members. It shall proceed to the election of a president, of a vice-president, and of a clerk, as well as to the formulation of rules for its interior regulation.

13. The contracting parties shall formulate the organic law of the Court. It shall be an integral part of the convention.

14. States which have not taken part in the convention may adhere to it in the ordinary way.

Their adhesion shall be notified to the government of the country in which the Court sits, and by that to the other adhering governments.